IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1756 OF 2005

Shyamsunder Radheshyam Agarwal ..Petitioner

Vs.

State of Maharashtra & Anr. ...Respondents

...

Mr. M.S.Mohite i/b Sandesh D.Patil Advocate for Petitioner
Mr. Y.S.Shinde,A.P.P. for the State

...

CORAM: SMT.V.K.TAHILRAMANI,J.

DATE : JULY 18,2005

P.C.

1. Heard the learned advocate for the petitioner and the learned A.P.P. for the State.

2. The petitioner is the original complainant in C.R.No. 113 of 2004 of Bhainder Police Station. The said complaint is under Sections 385, 387 and 506(II) r.w. 34 of IPC. In the said case, the police filed report and prayed for 'A' summary.

The learned Magistrate granted ‘A’ summary.

3. It is the grievance of the complainant that he was not heard before ‘A’ summary was granted by the learned Magistrate. Reliance is placed on the decision of the Bench of three Judges of the Supreme Court in the case of **Bhagwant Singh Vs. Commissioner of Police and another [A.I.R. 1985 S.C. 1285]**. In the case of **Bhagwant Singh,** in para no.4, the Supreme Court has observed that "‘C’ summary cannot be granted without notice to the complainant."

3. So also in the case of **Union Public Service Commission Vs. S.Papaiah and others, [A.I.R.1997 S.C.3876]** the Supreme Court has observed that the Magistrate accepting the report of the police and passing of order whereby the proceedings were dropped without issuing notice to the informant was an illegal order. Similar view has been taken by the Supreme Court in the case of **Gangadhar Janardan Mhatre Vs. State of Maharashtra and others; [2004(7) S.C.C. 768]**. Thus, in this view of the matter, if the learned Magistrate had not heard the

complainant before granting 'A' summary the said order would be illegal. In such case, if the learned Magistrate has not heard the complainant before granting 'A' summary, he shall hear the complainant and thereafter pass such orders as deemed fit and necessary in accordance with law as early as possible. The learned Magistrate after hearing the complainant to pass order in accordance with law without being influenced by the earlier order dated 26.4.2005. All contentions of the parties are left open. The complainant to appear before the trial Court on 1.8.2005.

4. Writ Petition is disposed of.

[V.K.TAHILRAMANI,J.]